

Interview Summary	Application No.	Applicant(s)	
	10/600,298	NIKOLCHEV ET AL.	
	Examiner	Art Unit	
	Kathryn Odland	3743	

All participants (applicant, applicant's representative, PTO personnel):

(1) Kathryn Odland.

(3) Steve Marcus.

(2) Henry Bennett.

(4) Howard Wisnia and James Conley.

Date of Interview: 14 October 2004.

Type: a) Telephonic b) Video Conference
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.

If Yes, brief description: Demo of contraceptive device.

Claim(s) discussed: 12-81.

Identification of prior art discussed: N/A.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Possible interference - see attached proposed discussion. Procedural issues raised about interference procedure were discussed. In particular, the attorneys stated that their patent documents qualify as prior art under 35 USC 102(e) and they are requesting that allowed application 08/770,123 be withdrawn from consideration. The question will be reviewed with the interference specialist after he investigates. Also, the attorneys gave explanations as to why they believe they have a base to copy claims from allowed application 08/770,123 and US Patent 6,096,052. Examination will proceed to determine if, in fact, the present application and its related cases do have a basis for these copied claims.

INTERFERENCE INITIAL MEMORANDUM

Count #1

To the Board of Patent Appeals and Interferences:

An interference is proposed involving the following 2 parties—

PARTY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
Nikolchev, <i>et al.</i>	10/600,298	6/20/2003		

If the involved case is a patent, have its maintenance fees been paid? Yes No Not due yet

Proposed priority benefit (list all intervening applications necessary for continuity):

COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
USA	09/912,067	7/23/2001	6,684,884	2/3/2004
USA	09/592,123	6/12/2000	6,526,979	3/4/2003
USA	09/093,835	6/8/1998	6,705,323	3/16/2004
USA	08/474,779	6/7/1995	6,176,240	1/23/2001

The claim(s) of this party corresponding to this count:

PATENTED OR PATENTABLE PENDING CLAIMS	UNPATENTABLE PENDING CLAIMS

The claim(s) of this party NOT corresponding to this count:

PATENTED OR PATENTABLE PENDING CLAIMS	UNPATENTABLE PENDING CLAIMS

PARTY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
Callister, <i>et al.</i>	09/112,085	7/8/1998	6,096,052	8/1/2000

If the involved case is a patent, have its maintenance fees been paid? Yes No Not due yet

Proposed priority benefit (list all intervening applications necessary for continuity):

COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
None. 7/8/1998 is the earliest priority date.				

The claim(s) of this party corresponding to this count:

PATENTED OR PATENTABLE PENDING CLAIMS	UNPATENTABLE PENDING CLAIMS
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The claim(s) of this party NOT corresponding to this count:

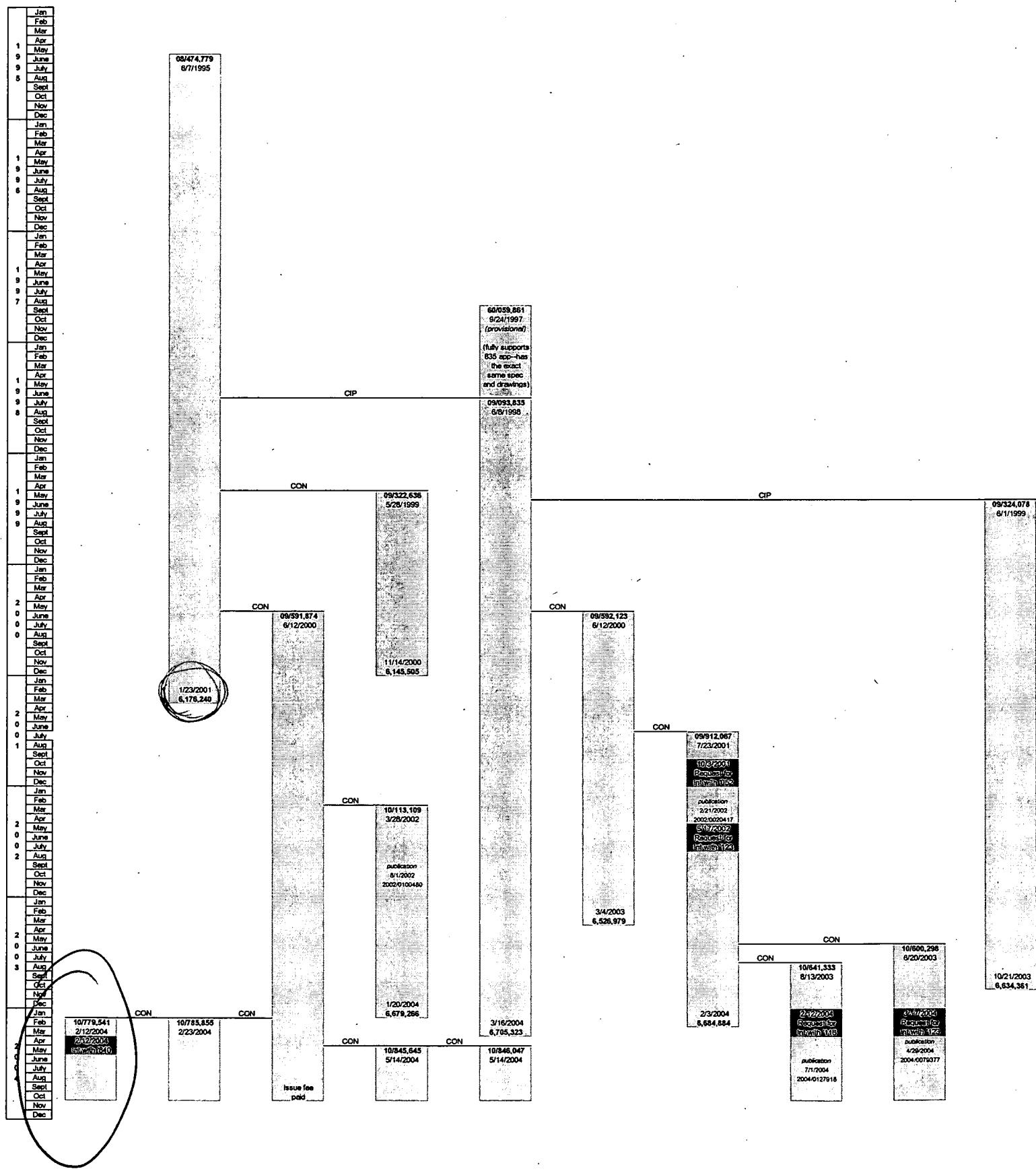
PATENTED OR PATENTABLE PENDING CLAIMS	UNPATENTABLE PENDING CLAIMS
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(Check off each step, if applicable) **INSTRUCTIONS**

- 1. Obtain all files listed above.
- 2. Confirm that the proposed involved claims are still active and all corrections and entered amendments have been considered. The patents must not be expired for, among other things, failure to pay a maintenance fee (Check PALM screen 2970).
- 3. If one of the involved files is a published application or a patent, check for compliance with 35 U.S.C. 135(b).
- 4. Obtain a certified copy of any foreign benefit documents where necessary (37 CFR 1.55(a)).
- 5. Discuss the proposed interference with an Interference Practice Specialist in your Technology Center.

DATE	PRIMARY EXAMINER (signature)	ART UNIT	TELEPHONE NO.
DATE	INTERFERENCE PRACTICE SPECIALIST or TECHNOLOGY CENTER DIRECTOR (signature)		TELEPHONE NO.
			Page ____ of ____

Conceptus Application Family Tree



Ovion Application Family Tree

1	9	9	6	Jan	08/770,123	08/770,123
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Proposed Count For Interference Between
Nikolchev 10/600,298 & Callister 6,096,052

Phantom Count

A contraceptive or sterilization device for occluding a fallopian tube to inhibit conception, comprising:

(‘298 Claim 19)

- a) a tubular structure having a first end, a second end, and a lumen extending therein, the tubular structure expandable within the fallopian tube from a first configuration to a second larger configuration; and
- b) a tissue ingrowth element connected to the tubular structure, the tissue ingrowth element inciting tissue ingrowth to thereby occlude the fallopian tube.

or

A contraceptive or sterilization device for occluding a reproductive body lumen to prevent the passage of reproductive cells therethrough, comprising:

(‘052 Claim 28)

- a) a tubular member having a first end, a second end, and a lumen extending therein, which is at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration; and
- b) a mesh member connected to the tubular member, which is permeable to allow for tissue ingrowth to thereby occlude the reproductive body lumen.

35 U.S.C. § 135(b)(1) Requirement Is Met³

Conceptus is in compliance with § 135(b)(1) because the relevant claims from the ‘052 patent, including Claim 28, were copied into Conceptus’ U.S. Patent Application No. 09/912,067 on July 23, 2001 (less than one year after the ‘052 patent issued on August 1, 2000).

(see highlighted claims of Publication 2002/002417 following this page)

³ 35 U.S.C. § 135 (b)(1): A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.